

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1051

AN ACT

To repeal sections 361.070, 361.080, and 513.653, RSMo,
and to enact in lieu thereof four new sections relating
to audits, with existing penalty provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 361.070, 361.080, and 513.653, RSMo,
2 are repealed and four new sections enacted in lieu thereof, to be
3 known as sections 29.375, 361.070, 361.080, and 513.653, to read
4 as follows:

5 29.375. 1. The state auditor shall, on a one-time basis,
6 perform a comparative audit of at least five, but no more than
7 ten, of the largest state agencies, as determined by total
8 appropriation for fiscal year 2012, and perform a comparative
9 audit of each chamber of the general assembly.

10 2. The state auditor shall develop criteria for fiscal
11 responsibility that are applicable to all agencies regardless of
12 their statutory, legal, or programmatic mandates. While creating
13 criteria for the audit, the auditor shall conform with the
14 provisions of applicable law and the standards for auditing of
15 governmental organizations, programs, activities, and functions
16 established by the comptroller general of the United States.

1 3. Upon completion of the audit, which shall occur no later
2 than August 28, 2014, the auditor shall submit a report of the
3 findings and recommendations to the general assembly, all
4 statewide elected officials, the office of administration, and
5 all state departments. The report issued shall contain
6 recommendations including, but not limited to, the optimal fiscal
7 practices to be promoted across all state agencies and efficiency
8 or cost saving measures, including recommended changes to agency
9 policy or state law, that could reduce the amount of government
10 spending.

11 361.070. 1. The director of finance and all employees of
12 the division of finance, which term shall, for purposes of this
13 section and section 361.080, include special agents, shall,
14 before entering upon the discharge of their duties, take the oath
15 of office prescribed by the constitution, and, in addition, take
16 an oath that they will not reveal the conditions or affairs of
17 any financial institution or any facts pertaining to the same,
18 that may come to their knowledge by virtue of their official
19 positions, unless required by law to do so in the discharge of
20 the duties of their offices or when testifying in any court
21 proceeding. For purposes of this section and section 361.080,
22 "financial institution" shall mean any entity subject to
23 chartering, licensing, or regulation by the division of finance.

24 2. The director of finance and all employees of the
25 division of finance shall further execute to the state of
26 Missouri good and sufficient bonds with corporate surety, to be
27 approved by the governor and attorney general, conditioned that
28 they will faithfully and impartially discharge the duties of

1 their offices, and pay over to the persons entitled by law to
2 receive it, all money coming into their hands by virtue of their
3 offices. The principal amount of bond applicable to each
4 employee shall be determined by the state banking and savings and
5 loan board. The bond, after approval by the governor and
6 attorney general, shall be filed with the secretary of state for
7 safekeeping. The bond premiums, not to exceed one percent on the
8 amount thereof, shall be paid out of the state treasury in the
9 same manner as other expenses of the division.

10 3. Neither the director of finance nor any employees of the
11 division of finance who participate in the examination of any
12 bank or trust company, or who may be called upon to make any
13 official decision or determination affecting the operation of any
14 bank or trust company, other than the members of the state
15 banking and savings and loan board who are required to have
16 experience managing a bank or association as defined in chapter
17 369, shall be an officer, director, attorney, owner, or holder of
18 stock in any bank or trust company or any bank holding company as
19 that term is defined in section 362.910, nor shall they receive,
20 directly or indirectly, any payment or gratuity from any such
21 organization, nor engage in the negotiation of loans for others
22 with any state bank or trust company, nor be indebted to any
23 state bank or trust company.

24 4. The director of the division of finance shall establish
25 an internal policy to ensure the professional conduct of
26 employees of the division of finance who participate in the
27 examination of any person or entity under the jurisdiction of the
28 director of the division of finance, or who may be called upon to

1 make any official decision or determination affecting the
2 operation of any person or entity under the jurisdiction of the
3 director of the division of finance. The policy shall address
4 such matters deemed appropriate by the director of the division
5 of finance, including, but not limited to, procedures to address
6 and mitigate the conflict of interest presented by offers of
7 employment or negotiations regarding employment between an
8 employee of the division and any person or entity under the
9 jurisdiction of the director of the division of finance.

10 5. The director of finance, in connection with any
11 examination or investigation of any person, company, or event,
12 shall have the authority to compel the production of documents,
13 in whatever form they may exist, and shall have the authority to
14 compel the attendance of and administer oaths to any person
15 having knowledge of any issue involved with the examination or
16 investigation. The director may seek judicial enforcement of an
17 administrative subpoena by application to the appropriate court.
18 An administrative subpoena shall be subject to the same defenses
19 or subject to a protective order or conditions as provided and
20 deemed appropriate by the court in accordance with the Missouri
21 Supreme Court Rules.

22 361.080. 1. To ensure the integrity of the examination
23 process, the director of finance and all employees of the
24 division of finance shall be bound under oath to keep secret all
25 facts and information obtained in the course of all examinations
26 and investigations [except] subject only to the exceptions set
27 out below. When disclosure is necessary or required under this
28 subsection, the director may set conditions and limitations

1 including an agreement of confidentiality or seek a judicial
2 protective order under subsection 2 of this section. The
3 exceptions allowing disclosure are as follows:

4 (1) To the extent that the public duty of the director
5 requires the director to report information to another government
6 official or agency or take administrative or judicial enforcement
7 action regarding the affairs of a financial institution;

8 (2) When called as a witness in a court proceeding relating
9 to such financial institution's safety and soundness or in any
10 criminal proceeding;

11 (3) When reporting on the condition of the financial
12 institution to the officers and directors of the financial
13 institution or to a holding company which owns the financial
14 institution;

15 (4) When reporting findings to a complainant, provided the
16 disclosure is limited to such complainant's account information;

17 (5) When exchanging information with any agency which
18 regulates financial institutions under federal law or the laws of
19 any state when the director of finance determines that the
20 sharing of information is necessary for the proper performance by
21 the director of finance and the other agencies, that such
22 information will remain confidential as though subject to section
23 361.070 and this section and that said agencies routinely share
24 information with the division of finance;

25 (6) When authorized by the financial institution's board of
26 directors to provide the information to anyone else; or

27 (7) [When disclosure is necessary or required, the director
28 may set conditions and limitations, including an agreement of

1 confidentiality or a judicial or administrative protective
2 order.] When undergoing a state audit, provided that the director
3 of finance has entered an agreement of confidentiality with the
4 state auditor. The agreement of confidentiality shall include
5 provisions for the redaction of records to remove protected
6 information from disclosure. The redaction of information shall
7 be required when it is comprised of nonpublic personal or
8 proprietary commercial and financial information, trade secrets,
9 information the disclosure of which could prejudice the effective
10 performance or security of the division of finance including
11 component CAMELS ratings or other sensitive findings, or
12 information that is protected under any recognized privilege,
13 such as attorney client privilege or work product. Protected
14 information shall also be identifying bank information including
15 anything that could be matched with public information to discern
16 the identity of a financial institution under the jurisdiction of
17 the division of finance or of individual persons or business
18 entities served by such financial institutions. When
19 confidential or protected information relating to a particular
20 financial institution under the division's jurisdiction is
21 requested, the director of the division of finance shall provide
22 notice to that institution at least thirty days prior to
23 production, and shall provide the institution a copy of the
24 proposed agreement of confidentiality. The affected institution
25 may submit comments to the director regarding the agreement or
26 the production and may seek review of the decision to produce the
27 information or of the confidentiality agreement, or both, under
28 the provisions of section 536.150. The director of the division

1 of finance may forego the notice to a financial institution under
2 this subsection when the notice would compromise an investigation
3 by any agency with criminal prosecutorial powers.

4 2. In all other circumstances, facts and information
5 obtained by the director of finance and the employees of the
6 division of finance through examinations or investigations shall
7 be held in confidence absent a court's finding of compelling
8 reasons for disclosure. Such finding shall demonstrate that the
9 need for the information sought outweighs the public interest in
10 free and open communications during the examination or
11 investigation process. To assure a meaningful hearing, any
12 financial institution that is not already a party to the judicial
13 proceeding and whose information is the subject of a records
14 request or subpoena shall be joined or notified and permitted to
15 intervene in the hearing and to participate regarding the
16 production request or subpoena. In no event shall a financial
17 institution, or any officer, director, or employee thereof, be
18 charged with libel, slander, or defamation for any good faith
19 communications with the director of finance or any employees of
20 the division of finance.

21 3. If the director or any employees of the division of
22 finance disclose the name of any debtor of any financial
23 institution or disclose any facts obtained in the course of any
24 examination or investigation of any financial institution, except
25 as herein provided, the disclosing party shall be deemed guilty
26 of a misdemeanor and upon conviction shall be subject to
27 forfeiture of office and the payment of a fine not to exceed one
28 thousand dollars.

1 513.653. 1. Law enforcement agencies involved in using the
2 federal forfeiture system under federal law shall [be required at
3 the end of their respective fiscal year to acquire an independent
4 audit of the federal seizures and the proceeds received therefrom
5 and provide this audit to their respective governing body and to
6 the department of public safety. A copy of such audit shall be
7 provided to the state auditor's office. This audit shall be paid
8 for out of the proceeds of such federal forfeitures] file a
9 report regarding federal seizures and the proceeds therefrom.
10 Such report shall be filed annually by January thirty-first for
11 the previous calendar year with the department of public safety
12 and the state auditor's office. The report for the calendar year
13 shall include the type and value of items seized and turned over
14 to the federal forfeiture system, the beginning balance as of
15 January first of federal forfeiture funds or assets previously
16 received and not expended or used, the proceeds received from the
17 federal government (the equitable sharing amount), the
18 expenditures resulting from the proceeds received, and the ending
19 balance as of December thirty-first of federal forfeiture funds
20 or assets on hand. The department of public safety shall not
21 issue funds to any law enforcement agency that fails to comply
22 with the provisions of this section.

23 2. Intentional or knowing failure to comply with the
24 [audit] reporting requirement contained in this section shall be
25 a class A misdemeanor, punishable by a fine of up to one thousand
26 dollars.
27